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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

07 Cr. 123 CLB LMS

5 ANTHONY BELLETTIERI,

6 Defendant.

7 -----x

8 February 15, 2007  
9 3:00 p.m.  
White Plains, N.Y.

10 Before:

11 HON. LISA M. SMITH,

12 Magistrate Judge

13 APPEARANCES

14 MICHAEL J. GARCIA  
United States Attorney for the  
15 Southern District of New York  
CYNTHIA DUNNE  
16 Assistant United States Attorney

17 MURRAY RICHMAN  
Attorney for Defendant

18  
19 VINCENT ADAMS, Pretrial Services

20 CATHERINE McFADDEN, FBI

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1 THE COURTROOM DEPUTY: United States v. Anthony  
2 Bellettieri.

3 MS DUNNE: Cynthia Dunne for the government.

4 MR. RICHMAN: Murray Richman for Anthony Bellettieri.

5 MS DUNNE: With me at counsel table is FBI agent Cathy  
6 McFadden.

7 THE COURT: Good afternoon.

8 Mr. Bellettieri, I want to advise you that this is not  
9 a trial. It is my understanding that you have decided to enter  
10 a plea of guilty in this case, and this proceeding is for the  
11 purpose of insuring that you are aware of all of your rights in  
12 connection with that plea, and that any waiver of those rights  
13 is knowing and voluntary prior to entering your plea of guilty  
14 if you still decide to do that.

15 If at any time you do not hear or understand what I  
16 say to you, I want you to interrupt me so I can repeat and  
17 explain what I said, and so that you can have an opportunity to  
18 consult with Mr. Richman to make sure that you have heard and  
19 understood everything I have said and everything I've asked  
20 you. Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And will you do that, sir?

23 THE DEFENDANT: Yes, I will.

24 THE COURT: Mr. Richman, has your client previously  
25 appeared on the complaint?

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1 MR. RICHMAN: No, your Honor.

2 THE COURT: Mr. Bellettieri, I want to advise you that  
3 you have an absolute right to remain silent at this and at  
4 every stage of the proceedings. Any statement that you do make  
5 may be used against you. You have this right to remain silent  
6 even if you have already made statements to law enforcement  
7 officers, and you're not required to answer any questions that  
8 law enforcement officers ask you from this moment on. Do you  
9 understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: You have an absolute right to be  
12 represented by counsel at this and at every stage of the  
13 proceedings against you including during any questioning by the  
14 authorities, any lineup and any court proceedings including  
15 this one. And you have the right to consult with your attorney  
16 prior to answering any questions. Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: For that reason you should consult with  
19 your attorney before answering any further questions including  
20 questions that I'm going to ask you during this proceeding. Do  
21 you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Mr. Richman, should I assume that you're  
24 retained in the matter?

25 MR. RICHMAN: I am.

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1 THE COURT: If you were to become unable to afford  
2 your attorney's services, you would be entitled to apply to the  
3 Court for a new attorney to represent you, and if the Court was  
4 then satisfied that you could not afford to hire a lawyer and  
5 that there was an appropriate reason to relieve your current  
6 lawyer, a new lawyer would be appointed to represent you with  
7 no cost to you. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Ms deJesus, would you place the defendant  
10 under oath, please.

11 (Defendant sworn)

12 BY THE COURT:

13 Q. It is important for you to understand that if you knowingly  
14 make a false statement during these proceedings, you could be  
15 subject to prosecution for the crime of perjury or for making a  
16 false statement to the Court and you could face a punishment of  
17 up to five years imprisonment and a \$250,000 fine for  
18 committing such a crime. Such punishment would be separate and  
19 apart from any sentence you may be facing on the crime charged  
20 in the felony information. Do you understand that?

21 A. Yes, your Honor.

22 Q. What's your full name, sir?

23 A. Anthony Bellettieri.

24 Q. How old are you?

25 A. 53.

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1 Q. Do you read, write, speak and understand the English  
2 language?

3 A. Yes, I do.

4 Q. How far did you go in school?

5 A. JD degree.

6 Q. Have you ever been hospitalized or treated for narcotic or  
7 alcohol addiction?

8 A. No, your Honor.

9 Q. Have you today or at any other time in your life taken or  
10 used any drugs, marijuana, alcohol, medication or any other  
11 substance which is currently affecting your ability to think or  
12 to understand these proceedings that are going on here today?

13 A. No, your Honor.

14 THE COURT: Mr. Bellettieri, you're charged in this  
15 felony information with one count of bank fraud and one count  
16 of mail fraud.

17 Ms deJesus, would you arraign the defendant on the  
18 waiver of indictment, please.

19 BY THE COURTROOM DEPUTY:

20 Q. Are you Anthony Bellettieri?

21 A. Yes.

22 Q. Have you signed this waiver of indictment which I have  
23 right here?

24 A. Yes, I have.

25 Q. Have you signed it voluntarily?

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1 A. Yes, I have.

2 Q. Before signing this waiver, did you discuss it with your  
3 attorney?

4 A. Yes, I did.

5 Q. Did your attorney explain this waiver to you?

6 A. Yes, he did.

7 Q. Do you understand that you are under no obligation to waive  
8 indictment?

9 A. Yes, I do.

10 Q. Do you understand that if you don't waive indictment and if  
11 the government wants to prosecute you, they would have to  
12 present your case to a grand jury which may or may not indict  
13 you?

14 A. Yes, I do.

15 Q. Do you understand what a grand jury is?

16 A. Yes, I do.

17 Q. Have you seen a copy of the felony information?

18 A. Yes, I have.

19 Q. Do you waive its public reading?

20 A. Yes, I do.

21 THE COURT: For purposes of this preliminary  
22 proceeding, Mr. Richman, your client enters a plea of not  
23 guilty?

24 MR. RICHMAN: That's correct.

25 THE COURT: It is a Wheel B case but before a district

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1 judge is selected, Ms Dunne, what's the government's position  
2 with regard to bail?

3 MS DUNNE: The government's position with regard to  
4 bail is, subject to the Court's approval, we have negotiated a  
5 bail package with the defense attorney's consent which would be  
6 a \$500,000 PRB co-signed by the defendant's wife and secured by  
7 their residence. And I will say just with regard to that  
8 issue, Mr. Bellettieri has come in and met with us voluntarily  
9 on numerous occasions and has actually been cooperating with us  
10 in trying to resolve this expeditiously. And we have no reason  
11 to believe he's any risk of flight at this time.

12 THE COURT: And you would have no objection to him  
13 remaining at liberty pending the time necessary to post the  
14 residence?

15 MS DUNNE: I think we've agreed within a week they'll  
16 have all the paperwork processed. And also we'd like to have  
17 his passport surrendered, however.

18 MR. RICHMAN: We've already surrendered the passport.

19 MS DUNNE: I withdraw that. They already surrendered  
20 the passport.

21 THE COURT: Limitations on travel?

22 MR. RICHMAN: New York area, Eastern and Southern  
23 Districts, your Honor.

24 THE COURT: That's the standard. No need for Pretrial  
25 Services supervision, Ms Dunne?

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1 MS DUNNE: Not that I know of. I've spoken with the  
2 Pretrial Service officer who took him in and did the intake on  
3 him and I believe they did not see any need for supervision.

4 THE COURT: And Mr. Richman, has your client been  
5 processed by the marshal?

6 MR. RICHMAN: Yes, he has, your Honor.

7 THE COURT: Thank you. Mr. Richman, are you in  
8 agreement with the package that Ms Dunne has indicated?

9 MR. RICHMAN: Yes, your Honor.

10 THE COURT: I will release the defendant on a \$500,000  
11 personal recognizance bond to be co-signed by his wife  
12 Antoinette Bellettieri to be secured by the personal residence,  
13 the defendant to be released on his own signature. The  
14 co-signature and the documents necessary for securing the bond  
15 with the real property is to be filed within one week of today.  
16 The government is to retain possession of the defendant's  
17 passport. Pending the resolution of this matter, the defendant  
18 is prohibited from obtaining any new travel documents, and  
19 during the period of release, travel is restricted to the  
20 Southern and Eastern District of New York.

21 BY THE COURT:

22 Q. Mr. Bellettieri, you would need to obtain the Court's  
23 permission if you must travel outside those areas for any  
24 reason. In order to do that, you notify Mr. Richman, he'll  
25 notify Ms Dunne and me and we'll determine whether it's



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1 appropriate for you to travel outside of the Southern and  
2 Eastern Districts of New York. That requires some lead time so  
3 you need to make sure that you let him know.

4 This is a setting of bail which means upon your  
5 release you must refrain from committing any violations of law  
6 whatsoever, including federal, state and local crimes. If you  
7 commit a felony while you are on release for this crime you may  
8 be subject to an additional prison term of ten years in  
9 addition to what you're facing on this charge and on the new  
10 charge. If you commit a misdemeanor while you're on release,  
11 the additional prison term would be up to one year. If you  
12 violate any of the conditions of release your bail may be  
13 immediately revoked and you may be detained pending sentencing  
14 in the matter. In addition, you may be prosecuted for contempt  
15 of court. If you fail to appear in court when you are required  
16 to do so, you may be committing the crime of bail-jumping which  
17 would subject to an additional punishment separate and apart  
18 from the penalties you're facing here. The penalty for bail  
19 jumping in this case is imprisonment for up to ten years and a  
20 \$250,000 fine.

21 Do you understand that, stir?

22 A. Yes, I do, your Honor.

23 THE COURT: Ms deJesus, it is a Wheel B case. May we  
24 have a card, please?

25 THE COURTROOM DEPUTY: Yes, your Honor.

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1 THE COURT: The matter is assigned to Judge Brieant.  
2 The instructions of Judge Brieant are where there is an  
3 agreement to enter a guilty plea, the plea may be entered  
4 before me on the consent of the parties.

5 I have before me a plea agreement dated February 13,  
6 2007. Mr. Richman, is it your client's wish to proceed before  
7 me?

8 MR. RICHMAN: Yes, your Honor.

9 BY THE COURT:

10 Q. Mr. Bellettieri, this proceeding is referred to as a plea  
11 allocution. You have the absolute right to have this plea  
12 allocution conducted before a United States district judge. It  
13 is the district judge, in this case Judge Brieant, who will  
14 impose sentence in your case. If you consent and if you agree,  
15 then I will conduct the plea allocution and I will then make a  
16 report to Judge Brieant in which I will recommend whether or  
17 not he should accept your plea of guilty. I will make that  
18 recommendation based on the information that is brought out  
19 during today's proceedings.

20 It is important for you to understand that the Court  
21 will not accept your plea unless the Court is satisfied that  
22 you fully understand all of your rights and that you are in  
23 fact guilty. Do you understand that?

24 A. Yes, I do, your Honor.

25 Q. Do you understand that you have an absolute right to have

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1 this plea allocution conducted before a United States district  
2 judge?

3 A. Yes, I do, your Honor.

4 Q. Do you agree and is it your wish that I should conduct the  
5 plea allocution?

6 A. Yes, your Honor.

7 THE COURT: Ms deJesus, would you have the defendant  
8 identify his signature on the consent form, please?

9 THE COURTROOM DEPUTY: Yes, your Honor.

10 Mr. Bellettieri, I show you this document entitled:  
11 Consent to proceed before a United States magistrate judge. Is  
12 that your signature here.

13 THE DEFENDANT: Yes.

14 THE COURTROOM DEPUTY: Dated today, February 15, 2007?

15 THE DEFENDANT: Yes.

16 BY THE COURT:

17 Q. Mr. Bellettieri, did you read the form before you signed  
18 it?

19 A. Yes, I did, your Honor.

20 Q. Did you discuss it with your attorney?

21 A. Yes, I did, your Honor.

22 Q. Did anybody threaten you or coerce you or promise you  
23 anything in order to get you to sign the consent form?

24 A. No, your Honor.

25 Q. Did you sign the form freely and voluntarily and of your

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1 own free will?

2 A. Yes, your Honor.

3 THE COURT: Mr. Richman, are you aware of any reason  
4 why the waiver and consent to proceed with a felony plea  
5 allocution before a United States magistrate judge should not  
6 be accepted?

7 MR. RICHMAN: I am not.

8 THE COURT: I find that Anthony Bellettieri is fully  
9 competent and capable of waiving his right to appear before a  
10 United States district judge in order to enter his plea of  
11 guilty. I therefore accept the consent form which has been  
12 signed and which will remain part of the Court's record as  
13 Court's Exhibit 1.

14 Q. Mr. Bellettieri, do you understand that your right to be  
15 represented by an attorney continues through every stage of the  
16 proceedings including trial and appeal, and that you have this  
17 right whether or not you choose to plead guilty to these  
18 offenses?

19 A. Yes, I do, your Honor.

20 Q. Have you had sufficient opportunity to consult with  
21 Mr. Richman about your case and especially about your decision  
22 to plead guilty?

23 A. Yes, I have, your Honor.

24 Q. Are you satisfied with the services which he has provided  
25 to you?

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1 A. Yes, I am, your Honor.

2 Q. Have you told him everything you know about this case?

3 A. Yes, I have, your Honor.

4 THE COURT: I have before me a copy of the plea  
5 agreement dated February 13, 2007. The original plea agreement  
6 should be marked as -- I'm sorry, the consent to proceed is  
7 Court's Exhibit 2 so this will be Court's Exhibit 3. The  
8 original should be marked as Court's Exhibit 3 and should  
9 remain in the custody of government counsel.

10 Ms deJesus, would you have the defendant identify his  
11 signature on the last page of the plea agreement, please.

12 THE COURTROOM DEPUTY: Yes, your Honor.

13 Mr. Bellettieri, I show you this plea agreement signed  
14 today, February 15, 2007. Is that your signature there?

15 THE DEFENDANT: Yes, it is.

16 Q. Mr. Bellettieri, have you reviewed the plea agreement with  
17 your attorney before you signed it?

18 A. Yes, I have, your Honor.

19 THE COURT: Mr. Richman, did you review each and every  
20 part of the plea agreement with your client?

21 MR. RICHMAN: I have, your Honor.

22 Q. Mr. Bellettieri, are you satisfied that you understand the  
23 entire plea agreement which Mr. Richman has reviewed with you?

24 A. Yes, I am, your Honor.

25 Q. Do you have any questions, either for Mr. Richman or for

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1 me, as to what this plea agreement says?

2 A. No, I do not, your Honor.

3 Q. Does the plea agreement contain the complete understanding  
4 between you and the government in connection with this case?

5 A. Yes, your Honor.

6 Q. Do you understand that anything which is not set forth in  
7 the plea agreement or which is not told to me at this time on  
8 the record will not be binding on the outcome of your case?

9 A. Yes, your Honor.

10 THE COURT: Ms Dunne, is there anything beyond the  
11 written plea agreement that the Court should be aware of?

12 MS DUNNE: No, Judge, other than let me just clarify  
13 that we have a restitution amount that could be as high as  
14 \$22,000,000. We have not resolved exactly to the penny what  
15 the restitution amount is as of the date of this plea. We're  
16 still working on it. But it is going to be somewhere over  
17 20,000,000 and probably it could be as high as 22,000,000.

18 THE COURT: That dispute does not affect the  
19 Sentencing Guidelines?

20 MS DUNNE: It does not.

21 MR. RICHMAN: Most respectfully, your Honor, there's  
22 not truly a dispute. We have yet to arrive at a method by  
23 which we can determine the actual amount. On paragraph 3 of  
24 the first page of the plea agreement there's reference made in  
25 subsection (1), a sum of money equal to no more than

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1 \$22,000,000. That's how it actually should read. We have not  
2 been able to arrive at the actual numbers and there is a slight  
3 possibility that it could be below 20,000,000, which is the  
4 cutoff for the plea agreement. So I'm just advising the Court  
5 that there might be some small change in the general numbers in  
6 this matter.

7 MS DUNNE: On the restitution amount I would say yes,  
8 because there has been some repayment. However, I believe that  
9 there's no way the loss will be under 20,000,000, because the  
10 guidelines look at the intended loss without credit for  
11 restitution payments that may have been made in the meantime.

12 MR. RICHMAN: That's correct.

13 MS DUNNE: Judge, if I may, I can give you an outline  
14 of what I know for certain at this point the government would  
15 prove as a loss, and those loss amounts are roughly 12.6  
16 million dollars to one victim, the bank, that was the holder of  
17 the Bellettieri accounts; roughly again approximately 7.6  
18 million dollars in checks that were declined once the bank  
19 realized what was going on and shut the account down; a private  
20 client who lost approximately two million dollars; and then the  
21 estimate being roughly one to two million other dollars worth  
22 of checks that are out there that we haven't quite identified  
23 at this point, the full arena of them.

24 So I believe there is no way -- and the amount to the  
25 main victim, which is the 12.6 million, that number I give you

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1 is after repayment of several repayment amounts that were  
2 credited against that of over a million dollars. There's no  
3 way our intended loss is going to be under 20,000,000.

4 It's possible that the restitution figure may be under  
5 20,000,000 but the loss figure will not be less than  
6 20,000,000.

7 THE COURT: Do you agree with that, Mr. Richman?

8 MR. RICHMAN: I believe that's within the ballpark,  
9 yes, your Honor.

10 THE COURT: My concern is that my instructions from  
11 Judge Brieant are that a plea is not acceptable unless the  
12 guidelines are agreed to. So it's important for me to know  
13 whether you're agreeing that the loss is at least 20 million  
14 dollars.

15 MR. RICHMAN: We believe that to be the case. Yes,  
16 your Honor.

17 THE COURT: Are you expecting him to admit to the  
18 forfeiture allegation as well?

19 MS DUNNE: Yes, Judge.

20 THE COURT: The forfeiture allegation of course  
21 references at least \$22,000,000. The plea agreement references  
22 an order of restitution that is identified as could be as high  
23 as \$22,000,000. And the plea agreement references the  
24 forfeiture as being a sum equal to \$22,000,000. So I'm not  
25 quite sure how these three things are intended to correspond to



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1 one another.

2 MR. RICHMAN: I think it should be up to \$22,000,000  
3 would be the correct definition.

4 MS DUNNE: I believe that's the case, Judge. Quite  
5 honestly, we have a forfeiture unit who put all of these three  
6 different kinds of ways of describing it into the various  
7 documents. It was my understanding when I questioned the same  
8 thing that the forfeiture allegation in the information has to  
9 say at least a certain amount as opposed to up to a certain  
10 amount because there has to be some sort of sum certain on the  
11 judgment. That's I believe why that language was put in there  
12 like that. My understanding is there will be ancillary  
13 proceedings to locate and forfeit properties in addition to  
14 those listed here if they come to light. However, I also  
15 understand that there is in the enforcement of the ancillary  
16 proceedings some sort of give and take and in this case in  
17 particular because Mr. Bellettieri is working with us to locate  
18 assets and to resolve the issue of restitution. I could be,  
19 it's a technical inconsistency here but I can tell you that the  
20 intent behind it is an up to 22,000,000 number. We have no  
21 reason to believe that it's going to be any higher than that.  
22 This is basically the most it will be.

23 MR. RICHMAN: That's exactly as I would put it, your  
24 Honor.

25 THE COURT: All right. Any other agreements or

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1 understandings that the Court should know about Mr. Richman?

2 MR. RICHMAN: None, your Honor.

3 Q. Mr. Bellettieri, did you sign the plea agreement freely and  
4 voluntarily?

5 A. Yes, I did, your Honor.

6 Q. Did anyone force you or coerce you or threaten you or  
7 promise you anything other than what is set forth in the  
8 written plea agreement in order to get you to sign that plea  
9 agreement?

10 MR. RICHMAN: May I just amend something I said.  
11 Ms Dunne's and I have agreed that part of the forfeiture will  
12 be his home, but that in view of the fact that the home is  
13 owned half by his wife that there will be a portion that will  
14 be sold and the wife will receive an opportunity to have a  
15 downsize of the house or half the assets of the house  
16 afterwards.

17 MS DUNNE: Judge, the issue is, in the forfeiture  
18 proceedings we can only forfeit his interest in any property.  
19 This is actual marital property. In the course of our  
20 investigation we actually saw some of the stolen funds going  
21 into home improvements, a kitchen extension, swimming pool,  
22 etc. So we put it in the indictment with the understanding  
23 from Mr. Richman that we will negotiate with the wife. She can  
24 file whatever process there is, but we will negotiate with them  
25 to resolve the issue of the house. We won't be seeking a

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1 hundred percent forfeiture of it because he doesn't own a  
2 hundred percent. And I believe it's our policy in our office  
3 in general with an innocent spouse that they will negotiate  
4 something so that the spouse is not left completely homeless  
5 out of the forfeiture provision. They haven't had those  
6 discussions yet, but when this plea is over, Mr. Richman will  
7 have those discussions with our forfeiture unit and I'll get  
8 involved if necessary.

9 MR. RICHMAN: That's correct, your Honor.

10 THE COURT: Thank you.

11 Q. Mr. Bellettieri, did anyone force you or coerce you or  
12 threaten you or promise you anything other than what's set  
13 forth in the written plea agreement and which has been  
14 discussed here today in order to get you to sign this plea  
15 agreement?

16 A. No, they have not.

17 Q. If you're convicted of the charges set forth in this felony  
18 information, either after trial or by plea of guilty, you would  
19 be subject on Count 1 to a maximum term of imprisonment of 30  
20 years, a maximum fine of \$250,000 or twice the gross gain or  
21 twice the gross loss resulting from the offense, whichever  
22 amount is greater, a term of supervised release of up to five  
23 years, a mandatory one hundred dollar special assessment, and  
24 restitution or forfeiture in an amount as high as \$22,000,000,  
25 although you could not be ordered, you would not be subject to

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1 both amounts. That is to say, it's either restitution or  
2 forfeiture and the amount could only be taken from you once.

3 Under Count 2 you would be subject to a maximum term  
4 of imprisonment of 20 years, a maximum fine of \$250,000 or  
5 twice the gross gain or twice the gross loss resulting from the  
6 offense, whichever amount is greater, a term of supervised  
7 release of up to five years, a mandatory one hundred dollar  
8 special assessment and again restitution and forfeiture, the  
9 total amount of which on both counts could not be higher than  
10 \$22,000,000.

11 If you're sentenced to a term of imprisonment, even if  
12 you're sentenced to the maximum term of imprisonment and if  
13 you're also sentenced to a term of supervised release and if  
14 you then violate the conditions of supervised release, you  
15 could be sentenced to an additional term of imprisonment of up  
16 to three years on each count for violating the conditions of  
17 your supervised release, which means that you face a total  
18 maximum potential term of imprisonment of 50 years on the two  
19 counts plus an additional six years should you violate the  
20 conditions of supervised release.

21 In addition, if you violate the condition of  
22 supervised release, you would not receive credit for time  
23 already served in prison or for time served on supervised  
24 release. Do you understand that these are the possible  
25 sentences that could be imposed following your plea of guilty

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1 in this matter?

2 A. Yes, your Honor.

3 Q. Are you an American citizen?

4 A. Yes, I am.

5 Q. Do you understand that you are pleading guilty to a felony  
6 offense and that such an adjudication may deprive you of  
7 certain valuable civil rights, which may include the right to  
8 vote, the right to hold public office, the right to serve on a  
9 jury, the right to possess any type of firearm including rifles  
10 and shotguns, the right to be considered for certain types of  
11 employment or to be bonded, and the right to possess or obtain  
12 certain government issued licenses, including licenses that may  
13 be required in certain professions and occupations, including  
14 the license to practice law. Do you understand that?

15 A. Yes, I do, your Honor.

16 Q. Do you also understand that the Court may order you at your  
17 expense to provide notice of your conviction to victims of the  
18 offense?

19 A. Yes, your Honor.

20 Q. Do you understand that these are the possible legal  
21 consequences of entering a plea of guilty in this case?

22 A. Yes, I do.

23 Q. Do you understand that the United States Sentencing  
24 Commission has issued guidelines for judges to follow in  
25 determining the appropriate sentence in a criminal case?

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1 A. Yes, I do.

2 Q. Do you understand that these guidelines are not mandatory,  
3 but they must be considered by the Court along with other  
4 sentencing factors when the Judge determines the appropriate  
5 sentence to impose?

6 A. Yes, I do, your Honor.

7 Q. Have you and Mr. Richman talked about how the Sentencing  
8 Guidelines would be calculated in your case?

9 A. Yes, we have, your Honor.

10 Q. The plea agreement in this case sets forth a stipulated  
11 sentencing range of 121 to 151 months and a stipulated fine  
12 range of 17,500 to 175,000. Do you understand that this is  
13 simply an understanding between you and your attorney and the  
14 attorney for the government, and that is not binding on the  
15 district judge when he imposes sentence in this case?

16 A. Yes, I do, your Honor.

17 Q. Do you understand that Judge Brieant will consider the  
18 guidelines, but he will impose a sentence in accordance with  
19 the statute, which in this case means that the prison term on  
20 Count 1 will be not more than 30 years and the prison term on  
21 Count 2 will be not more than 20 years, and you could be  
22 sentenced to a total maximum term of 50 years in prison, do you  
23 understand that?

24 A. Yes, I do.

25 Q. Do you understand that the Court will not be able to

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1 determine the appropriate sentence for your case until after a  
2 presentence report has been prepared and you and your attorney  
3 as well as the government have had an opportunity to challenge  
4 the facts reported in the presentence report as well as the  
5 calculation of the sentencing guideline range and any  
6 sentencing recommendation in that report, do you understand  
7 that?

8 A. Yes, I do, your Honor.

9 Q. Do you understand that if there are any objections to the  
10 presentence report that those objections will be ruled on by  
11 the Court, and if necessary, a hearing will be held to  
12 determine what information is relevant to the Court's  
13 determination of the sentence? Do you understand that?

14 A. Yes, I do, your Honor.

15 Q. Do you understand that you would have the right to appeal  
16 any sentence that is greater than the guidelines range set  
17 forth in the plea agreement, and that the government would have  
18 the right to appeal any sentence that is lower than the  
19 guidelines range set forth in the plea agreement? Do you  
20 understand that?

21 A. Yes, I do, your Honor.

22 Q. Do you understand that one effect of the plea agreement is  
23 that you are giving up other rights that you might have had to  
24 appeal or otherwise attack the sentence imposed by the Court?

25 A. Yes, I do, your Honor.

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1 THE COURT: Mr. Richman, have you specifically  
2 reviewed with your client the first full paragraph on page 5 of  
3 the plea agreement commonly referred to as the *Brady* waiver?

4 MR. RICHMAN: Yes, your Honor.

5 THE COURT: In reference to that paragraph, by  
6 recommending the acceptance of this plea of guilty, if I should  
7 do that, I make no determination or recommendation about the  
8 enforceability of that particular paragraph. In light of  
9 certain Second Circuit decisions, including *U.S. v. Persico*;  
10 *United States v. Avellino*; *Tate v. Wood*,; and *Miller v.*  
11 *Angliker*; and notwithstanding the United States Supreme Court  
12 decision in *U.S. v. Ruiz*, citations available upon request, I  
13 have concerns about whether this clause in any particular case  
14 would be enforceable. And a recommendation that the plea  
15 should be accepted should not be construed as an endorsement of  
16 this paragraph of the plea agreement.

17 BY THE COURT:

18 Q. Mr. Bellettieri, do you also understand that if you  
19 disagree with the Court's sentencing decision, that will not  
20 give you a basis for withdrawing your plea of guilty?

21 A. I do, your Honor.

22 Q. Do you understand that parole has been abolished, and if  
23 you are sentenced to a term of imprisonment, you will not be  
24 eligible for early release on parole?

25 A. Can you say that again, your Honor.



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1 Q. In the federal system, parole has been abolished. If  
2 you're sentenced to a term of imprisonment, you will not be  
3 eligible for early release on parole.

4 MR. RICHMAN: May I explain that to my client?

5 THE COURT: Sure, take your time.

6 (Pause)

7 Q. Do you understand that?

8 A. Yes, I do, your Honor.

9 Q. Do you understand that you do not have to plead guilty and  
10 you have an absolute right to plead not guilty and to have the  
11 matter go to trial by judge or by jury?

12 A. Yes, I do, your Honor.

13 Q. Do you understand that if you choose to plead not guilty,  
14 you are entitled to have a speedy and public trial of your  
15 case?

16 A. Yes, I do, your Honor.

17 Q. Do you understand that at any trial of this matter, you  
18 would be entitled to the presumption of innocence, and that the  
19 presumption would remain with you until the government proves  
20 each and every element of any one or more of the crimes charged  
21 beyond a reasonable doubt to the satisfaction of the judge, if  
22 it's a judge trial, or to the unanimous satisfaction of the  
23 jury, if it is a jury trial? Do you understand that?

24 A. Yes, I do, your Honor.

25 Q. At such a trial you would have the right with the help of

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1 your attorney to confront and cross-examine the witnesses  
2 against you; you would have the right to call witnesses to  
3 testify for you; and to have subpoenas issued to compel  
4 witnesses to give testimony. You would also have the right to  
5 testify at your trial, but you could not be forced to testify.  
6 If you decided not to testify, your decision to remain silent  
7 could not be held against you in any way. At your trial would  
8 you also have the right I have spoken of to the assistance of  
9 an attorney and to have an attorney appointed to represent you  
10 without fee if you could not afford counsel.

11 Do you understand that if you plead guilty to the  
12 charges in this felony information, that you would give up your  
13 right to a trial, and except for the right to counsel, which  
14 you retain, you would also give up all the other rights which I  
15 have explained to you here?

16 A. Yes, I do, your Honor.

17 Q. Have you clearly heard and fully understood everything I've  
18 said to you?

19 A. Yes, I have, your Honor.

20 Q. Do you have any questions either for me or for your  
21 attorney about anything I've said or about anything I've asked  
22 you?

23 A. I do not.

24 THE COURT: Ms Dunne, what are the elements of the  
25 offenses, and what is the government prepared to prove at trial

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1 in order to establish those elements?

2 MS DUNNE: The elements for the first count, which is  
3 bank fraud, is that the defendant knowingly executed a scheme  
4 to defraud various financial institutions through false and  
5 fraudulent pretenses. The allegations of the mail fraud  
6 provision are a scheme to defraud for the purpose of obtaining  
7 money by fraud and the deposit of matters in the mail.

8 If this case were brought to trial, the government  
9 would prove, be prepared to prove that the defendant defrauded  
10 corporate and private clients of millions of dollars by an  
11 orchestrating a check kite scheme with his corporate and escrow  
12 accounts. He was a partner at law firm of Bellettieri, Fonte  
13 and Laudonio. They were agents for banks and financials  
14 institutions, receiving and dispersal agents for those banks.  
15 They also received millions of dollars for distributions at  
16 closings, refinancing and other related real estate  
17 transactions. In addition, they regularly received client  
18 funds in connection with real estate transactions.

19 Over the period of the past approximately three years,  
20 the defendant siphoned over 22,000,000 dollars from Bellettieri  
21 Fonte and Laudonio's bank accounts by orchestrating a check  
22 kite involving their operation and escrow accounts. When it  
23 was brought to a screeching halt by the main victim, the effect  
24 was to have shifted the loss of his theft to that victim, the  
25 bank that was holding his bank accounts, and where those bank

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1 accounts were maintained.

2           The evidence, if this case were to go to trial, would  
3 show that the defendant used the stolen monies for his own gain  
4 and the gain of others. Specifically, he purchased real  
5 estate, commercial real estate for himself and others, he  
6 purchased interests and vacation properties, luxury properties,  
7 he made home improvements as I referred to before in his  
8 marital residence, among other things a kitchen extension and a  
9 swimming pool. He paid the personal credit card payments of  
10 himself and others and firm payments. He financed firm  
11 extensions of high salaries of himself and others that the law  
12 firm could not otherwise have sustained on a regular basis  
13 because they weren't making enough income to make those  
14 payments. He financed a family wedding and he leased and  
15 purchased automobiles for himself and others, among other  
16 things that we've seen through the investigation.

17           In connection with Count 2, he had sort of a separate  
18 scheme. The mail fraud count is a bit of a separate scheme in  
19 that he had a particular client whom he told that he was going  
20 to invest the client's money in private mortgages and that the  
21 client's money would be secured by interests in real property  
22 located in various locations. For the purpose of obtaining the  
23 money from the client and to hide his theft of the client's  
24 funds, he prepared phony mortgage documents so that the client  
25 actually thought that he had interest in real property when he

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1 didn't. The money was actually stolen by him. And for the  
2 purpose of orchestrating this scheme involving the private  
3 client, he mailed what purported to be occasional mortgage  
4 checks, mortgage payment checks and phony mortgage documents to  
5 the client through the United States mail.

6 And with regard to the bank fraud count, let me just  
7 say that two of the larger victims are commercial banks which  
8 fall within the scope of what is defined by the statute, Title  
9 18, as a financial institution. However, there are others that  
10 are mortgage brokers that also fall within the scope of the  
11 definition for the purposes of the bank fraud.

12 In addition, the forfeiture allegation that is in the  
13 information, Mr. Richman just before we started here called to  
14 my attention one really omission which is paragraph 14(b).

15 MR. RICHMAN: 1301.

16 MS DUNNE: I'm sorry (h) where it says at least  
17 \$30,000 in payments and he tells me it was actually a \$130,000  
18 payment for a condominium. I just throw that out to your  
19 Honor.

20 And the other thing is subparagraph (b) which refers  
21 to a Visto Realty. What we were getting at on that allegation  
22 is defendant's interest in property located at 1803-1805 Edison  
23 Avenue, Bronx, New York. Mr. Richman tells me we have the  
24 wrong corporate name in there. But he does acknowledge that he  
25 owns the property, has an interest in the commercial realty of

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1 1803-1805 Edison Avenue, Bronx, New York. However the  
2 corporate names listed in subparagraph (b) are not accurate.

3 THE COURT: Mr. Richman, do you agree with those two  
4 modifications?

5 MR. RICHMAN: Yes, your Honor, we provided them to the  
6 United States Attorney's Office.

7 THE COURT: Ms Dunne, I realize I should have made  
8 this inquiry previously. I'm a bit confused. With regard to  
9 the bottom paragraph on the first page of the plea agreement  
10 that goes over to the top of the second page, it indicates that  
11 any forfeiture of the defendant's assets shall not be treated  
12 as satisfaction of any restitution that the Court may impose.  
13 And that's not my understanding of the law. The government  
14 doesn't get double the money, they don't get to double dip in  
15 terms of any recoupment. That forfeiture should satisfy  
16 restitution.

17 MS DUNNE: This is again an issue I raised with my  
18 forfeiture unit. I understand this is the standard language we  
19 use. We have major victims here. There may be a case where  
20 you don't have major victims and there's surplus substituted  
21 assets out there. I do anticipate here that the major victims  
22 in this case will be making an application for the forfeited  
23 funds and we'll be facilitating that. I have no reason to  
24 believe that that will not happen. But I believe the law  
25 technically does not require it and that's why the language is

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1 the way it is in this plea agreement. And it's a process which  
2 our office will be involved in continuing through the future.

3 Q. Did you hear what the assistant United States attorney just  
4 said, Mr. Bellettieri?

5 A. Yes, your Honor.

6 Q. How do you wish to plead to the charge of bank fraud as set  
7 forth in the pending felony information?

8 A. Guilty.

9 Q. How do you wish to plead to the charge of mail fraud as set  
10 forth in the pending criminal information?

11 A. Guilty.

12 Q. And do you also admit to the forfeiture allegation which is  
13 included in the felony information as verbally modified by the  
14 assistant United States attorney?

15 A. Yes, I do, your Honor.

16 Q. Has anyone threatened you or coerced you or pressured you  
17 improperly in order to get you to plead guilty to these charges  
18 and to admit to this forfeiture allegation?

19 A. No, they have not.

20 Q. Has anyone made any specific promise to you about what the  
21 sentence of the Court will be?

22 A. No.

23 Q. Mr. Bellettieri, tell me in your own words what you did to  
24 commit these crimes.

25 A. What I did is over the last number of years, I was covering

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1 overdrafts in our mortgage closing accounts and I wrote checks  
2 out of a controlled disbursement account and deposited it into  
3 the funding account.

4 Q. Were those checks which you were entitled to use for that  
5 purpose?

6 A. No, your Honor.

7 Q. Did this occur between 2003 and November of 2006?

8 A. Yes, your Honor.

9 MR. RICHMAN: Actually, your Honor, it does go back  
10 even further than that. It's covering and covering.

11 Q. In any event, through November of 2006?

12 A. Yes, your Honor.

13 Q. Did that include using a series of linked bank accounts at  
14 JP Morgan Chase that were maintained by the law firm?

15 A. Yes, your Honor.

16 Q. And in doing so, did you take for your own purposes and for  
17 the purposes of others and for the purposes of the firm monies  
18 to which neither you nor those others nor the firm were  
19 entitled?

20 A. Yes, your Honor.

21 THE COURT: Ms Dunne, is there an amount for the bank  
22 fraud, total amount of the bank fraud?

23 MS DUNNE: It's going to be roughly in the area of  
24 20,000,000 I believe when we're all said and done. It's again  
25 in that region. With that plus the mail fraud involving the



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1 other client it will bring us over 20,000,000.

2 Q. Mr. Bellettieri, did the total amount of the overdraft  
3 scheme that you were engaged in that you've described total  
4 between 18 and \$20,000,000?

5 A. Yes, your Honor.

6 Q. Where were you when you did these things?

7 A. Westchester County.

8 Q. Is that where the accounts were also maintained?

9 A. Yes, your Honor.

10 Q. And that's where your firm was as well?

11 A. Yes, your Honor.

12 Q. Did you utilize some of the benefits of this scheme for  
13 your own personal purposes?

14 A. Yes, your Honor.

15 Q. And did that include certain home improvements on your  
16 personal residence as well as the lease and purchase of  
17 multiple automobiles?

18 (Counsel confers with his client)

19 MR. RICHMAN: Your Honor, to explain that particular  
20 position, he would deposit the money to his account from the  
21 firm, and he would use the money. It was not directly from the  
22 bank. But in the final analysis, that's what happened.

23 Q. So the value of it was used for your own personal benefit,  
24 is that fair to say?

25 A. Yes, your Honor.

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1 (Counsel confers with his client)

2 MR. RICHMAN: Only that portions of those payments,  
3 your Honor, he informs me came from a home equity loan as well.  
4 But in the main, the money came from Chase.

5 MS DUNNE: If I may, the home equity loan was then  
6 repaid by the stolen money.

7 Q. Is that correct, Mr. Bellettieri?

8 A. Substantially, your Honor.

9 (Counsel confers with his client)

10 A. Yes, your Honor.

11 Q. And in engaging in this scheme, is it correct to say that  
12 you on your own behalf and on behalf of the others that we've  
13 talked about obtained property and money that was under the  
14 custody and control of financial institutions by engaging in  
15 false and fraudulent pretenses?

16 A. Yes, your Honor.

17 Q. Do you concede that the institutions in question constitute  
18 financial institutions as envisioned by the statute?

19 A. Yes, your Honor.

20 (Counsel confers with his client)

21 Q. Did you also engage in a scheme with regard to a private  
22 client involving inducing the client to invest his funds in  
23 what were purported to be private mortgages?

24 A. Yes, your Honor.

25 Q. Was that in or before 2003 through November of 2006?

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1 A. Yes, your Honor.

2 Q. And did you for that purpose induce the client to permit  
3 the use of certain monies under false pretenses?

4 A. Yes, your Honor.

5 Q. And for purposes of engaging in this scheme, did you either  
6 mail or cause to be mailed certain documents and other things  
7 in order to carry this scheme out?

8 A. Yes, your Honor.

9 Q. And that would include things that were mailed to the  
10 client, for example, to cause the client to believe that these  
11 private mortgages in fact existed when they did not, is that  
12 fair to say?

13 A. Yes, your Honor.

14 Q. And did the amount of money involved constitute  
15 approximately \$2,000,000?

16 A. Yes, your Honor.

17 MR. RICHMAN: Just under 2,000,000, your Honor.

18 Q. Is that correct, Mr. Bellettieri?

19 A. Yes, your Honor.

20 Q. Were you also in Westchester County when you engaged in  
21 this activity?

22 A. Yes, your Honor.

23 Q. Did you commit these acts knowingly and willfully?

24 A. Yes, your Honor.

25 Q. Did you know it was against the law to do what you were

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1 doing?

2 A. Yes, your Honor.

3 THE COURT: Is there anything else which either  
4 counsel believes the Court needs to elicit from the defendant  
5 before making the recommendation contemplated by Rule 11?  
6 Ms Dunne?

7 MS DUNNE: No, your Honor.

8 THE COURT: Mr. Richman?

9 MR. RICHMAN: No.

10 THE COURT: Mr. Richman, do you know of any reason why  
11 the Court should not recommend acceptance of your client's plea  
12 of guilty.

13 MR. RICHMAN: I do not.

14 THE COURT: Ms Dunne?

15 MS DUNNE: None that I know of, your Honor.

16 Q. I should perhaps inquire with specificity as to the  
17 forfeiture allegation. Mr. Bellettieri, do you understand that  
18 a part of the plea agreement to which you have committed  
19 yourself is that you will agree not only to forfeit the  
20 specific property that's set forth in the forfeiture  
21 allegation, but that you will not file any claim or petition to  
22 remit or mitigate any of the specific property, and you will  
23 also take all necessary steps including executing any necessary  
24 documentation to pass clear title to the United States in  
25 connection with those forfeiture allegations? Do you

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1 understand that?

2 A. Yes, your Honor.

3 Q. Mr. Bellettieri, in light of everything that has been said  
4 here today, is it still your wish to plead guilty to the count  
5 of mail fraud as set forth in the felony information?

6 A. Yes, your Honor.

7 Q. Is it still your wish to plead guilty to the count of bank  
8 fraud as set forth in the felony information?

9 A. Yes, your Honor.

10 Q. Is it still your wish to admit to the forfeiture allegation  
11 as set forth in the felony information?

12 A. Subject to the discussion that we had.

13 Q. Subject to the discussion and the conditions that were set  
14 forth here.

15 A. Yes, your Honor.

16 THE COURT: Upon this allocution, I find that the  
17 defendant Anthony Bellettieri is fully competent and capable of  
18 entering an informed plea. The plea is knowing and voluntary  
19 and is supported by an independent factual basis for each and  
20 every element of the crimes charged.

21 Accordingly, I respectfully report and recommend to  
22 Judge Brieant that the plea should be accepted and that the  
23 defendant should be adjudged guilty of the offenses charged in  
24 the felony information.

25 Pursuant to Title 28, United States Code, Section

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1 636(b)(1) and Federal Rules of Civil Procedure 72(b) and 6(a),  
2 the parties have a total of ten working days from today's date  
3 to file written objections to this report and recommendation.  
4 Such objections, if any, shall be filed with the Clerk of the  
5 Court with additional copies delivered to the chambers of the  
6 Honorable Charles L. Brieant and to my chambers both here in  
7 this courthouse, 300 Quarropas Street, White Plains, New York.  
8 Failure to file timely objections will preclude later appellate  
9 review of any order of judgment that will be entered relating  
10 to this report and recommendation. Requests for extensions of  
11 time to file objections must be made to Judge Brieant

12 I direct that a presentence investigation be conducted  
13 by the United States Department of Probation.

14 Mr. Bellettieri, after this proceeding, you must go to  
15 the Department of Probation on the ground floor of this  
16 building and your attorney must accompany you. Either today or  
17 on some other day that will be scheduled, you will be  
18 interviewed by a representative of the Department of Probation.  
19 I'm sure that Mr. Richman will assist you in connection with  
20 that interview and you're entitled to have him present during  
21 the interview if you wish. You must be fully honest and  
22 truthful during that interview, because if it comes to the  
23 Court's attention that you have filed false or misleading  
24 information, that will be held against you at the time of  
25 sentencing. Do you understand that?

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1 THE DEFENDANT: Yes, I to do, your Honor.

2 THE COURT: I further direct the court reporter to  
3 prepare a transcript of these proceedings within 30 days  
4 setting forth my report and recommendation to Judge Brieant.  
5 The transcript is to come to me for review.

6 The matter is set for sentenced on May 18, 2007, at  
7 nine a.m.

8 MR. RICHMAN: I have a scheduled trial on that date.  
9 I recognize the likelihood that there will be adjournments.

10 THE COURT: What I suggest is that when it gets closer  
11 to that date you might reschedule with Judge Brieant's chambers  
12 to find an appropriate date. That's the date we were given by  
13 Judge Brieant. In any event you would want to confirm the date  
14 and time prior to that date.

15 Anything else Ms Dunne?

16 MS DUNNE: No, your Honor.

17 THE COURT: Mr. Richman?

18 MR. RICHMAN: No, your Honor.

19 THE COURT: Very well. We're adjourned.

20 (Proceedings adjourned)

21

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